

1 HONORABLE ROBERT S. LASNIK
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 CHARLOTTE WINELAND, Individually, and
10 SUSAN WINELAND, as Personal
11 Representative of the Estate of JOHN DALE
12 WINELAND, Deceased,

13 Plaintiffs,
14 v.
15 AIR & LIQUID SYSTEMS CORPORATION,
et al.

Defendants.

Case No. 2:19-cv-00793-RSL

DEFENDANT CRANE CO.'S REPLY
IN FURTHER SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

NOTED FOR HEARING:
January 24, 2020

ORAL ARGUMENT REQUESTED

16 **I. INTRODUCTION AND RELIEF REQUESTED**

17 Plaintiffs' Opposition to Crane Co.'s Motion for Summary Judgment does not present the
18 Court with anything beyond speculation that Mr. Wineland was exposed to asbestos-containing
19 materials for which Crane Co. is legally responsible. Summary judgment is appropriate for that
20 reason. Plaintiffs' request that the Court defer consideration of Crane Co.'s Motion pursuant to
21 Fed. R. Civ. P. 56(d) fails to identify the specific facts Plaintiffs expect further discovery to reveal,
22 and is, accordingly, deficient under the rules.

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DEFENDANT CRANE CO.'S REPLY IN
FURTHER SUPPORT OF MOTION FOR
SUMMARY JUDGMENT - 1
(Case No. 2:19-cv-00793-RSL)

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II. AUTHORITY AND ARGUMENT

1. There is no admissible evidence that a Crane Co. product exposed Mr. Wineland to asbestos.

4 Significantly, there is no testimony in this case from anyone who has personal knowledge
5 of Mr. Wineland's work. Accordingly, there is no evidence, from any witness with knowledge,
6 that Mr. Wineland ever worked with any Crane Co. valve, let alone that he was exposed to any
7 asbestos-containing material used with such a valve and for which Crane Co. is legally responsible.

8 Plaintiffs have attempted to construct a case wholly upon the unsupported speculation of
9 one of their expert witnesses. Specifically, Plaintiffs' Navy expert, Captain Lowell, speculates in
10 his report that based on his review of some incomplete naval records, Mr. Wineland "would have
11 performed hands-on inspection, maintenance, repair, installation, and removal of valves . . ." Dkt.
12 146-2 at 20. Captain Lowell further claims that "numerous Crane-supplied valves were installed
13 in Mr. Wineland's ships' machinery spaces and that Mr. Wineland worked with and around those
14 many Crane-supplied valves." *Id.* at 25. As he does not claim that he ever worked with, served
15 aboard a ship with, or even spoke to Mr. Wineland, Captain Lowell's statements regarding the
16 work Mr. Wineland would have or could have performed, let alone the particular brands of
17 products he worked with, are pure speculation and are not competent evidence to oppose summary
18 judgment.

19 Plaintiffs' argument that this sort of testimony was held sufficient to withstand summary
20 judgment in prior Washington state decisions is unavailing. Recent Western District of
21 Washington decisions and numerous others have held insufficient to withstand summary judgment
22 evidence very similar to what Plaintiffs present here. *See Yaw v. Air & Liquid Sys. Corp.*, 2019
23 WL 3531232, at *2 (W.D. Wash., Sept. 25, 2019) (noting insufficiency of establishing a product's
24 mere presence in the workplace and granting manufacturer's motion for summary judgment where
25 plaintiff "fail[ed] to identify a specific time that [plaintiff] was on a particular ship and exposed to
26 a particular product that had produced or was producing asbestos dust"); *Klopman-Baerselman v.*

1 *Air & Liquid Sys. Corp.*, 2019 WL 5064765, at *2 (W.D. Wash., Oct. 9, 2019) (granting
 2 manufacturer's motion for summary judgment where plaintiff did not offer "testimony of
 3 witnesses with personal knowledge of decedent using or otherwise being exposed to an asbestos-
 4 containing product for which [defendant] is responsible"); *Deem v. Air & Liquid Sys. Corp.*, 2019
 5 WL 6251040, at *3 (W.D. Wash., Nov. 22, 2019) (granting manufacturer's motion for summary
 6 judgment where plaintiffs failed to establish exposure through fact witnesses and "easily
 7 reject[ing] expert report that purported to show exposure"); *Nelson v. Air & Liquid Sys. Corp.*,
 8 2014 WL 6982476, at *4 (W.D. Wash., Dec. 9, 2014).

9 Decisions from other courts are in accord. For instance, *MacQueen v. Warren Pumps LLC*,
 10 246 F. Supp. 3d 1004, 1013 (D. Del. 2017), plaintiffs had no witnesses indicating that the decedent
 11 worked with or around particular defendants' products. Plaintiffs sought to overcome this
 12 deficiency by presenting a naval expert who testified that based on his review of the decedent's
 13 naval and service records, defendants' products had been onboard the ships at issue, and the
 14 decedent "would have worked with or been in close proximity" to asbestos components contained
 15 within such products. *Id.* at 1014. The court held that an "expert affidavit of this nature, standing
 16 alone, is simply not enough to create a genuine fact issue for trial." *Id.* at 1016. The court further
 17 explained:

18 Plaintiff has not produced any percipient fact witness testimony that would demonstrate
 19 that [decedent] ever worked on or was otherwise exposed to any of the Defendants'
 20 products. She relies solely on [expert] opinion that, based on what [decedent's] job titles
 21 and duties were, he "would have worked with and been in close proximity to" [defendants']
 22 products on the two relevant vessels. But as the key, hypothetical-sounding words ("would
 23 have") in [the expert's] opinion testimony suggest, there is not sufficiently solid evidence
 24 here as to what products [decedent] *actually* was exposed to. [The expert's] testimony that
 25 [decedent] "would have been exposed" to a certain product is not all that different from
 26 testimony that [decedent] "could have" or "might have" been so exposed. All such
 testimony is unduly speculative and cannot, on its own, raise a genuine issue of material
 fact.

1 *Id.* at 1018. See also *Olivar v. Buffalo Pumps, Inc.*, 2011 WL 13254695, at *5 (E.D. Pa.,
 2 Mar. 29, 2011) (granting equipment manufacturer's motion for summary judgment where plaintiff
 3 "us[ed] an expert witness to establish the factual (product identification and exposure) basis of her
 4 case."); *Davis v. Air & Liquid Sys. Corp. et. al.*, 2017 WL 6886678, at *3 (D. Ariz., Nov. 9, 2017)
 5 (granting Crane Co.'s motion for summary judgment where, although naval expert indicated Crane
 6 Co. valves were present aboard a ship where plaintiff worked, (1) the expert did not indicate where
 7 the valves were located on the ship, and (2) his speculative testimony that plaintiff "likely" repaired
 8 valves was insufficient).

9 The result here should likewise be summary judgment in Crane Co.'s favor regardless of
 10 whether the Court applies Washington or maritime law in this action. Both bodies of law use a
 11 substantial factor test for causation. *Lockwood v. AC&S, Inc.*, 109 Wn.2d 235, 245-248, 744 P.2d
 12 605 (1987); *McIndoe v. Huntington Ingalls Inc.*, 817 F.3d 1170, 1174-1176 (9th Cir. 2016). Here,
 13 Plaintiffs have submitted no evidence that could raise a genuine dispute of material fact on that
 14 element.

15 **2. There is no evidence supporting imposing any legal duty on Crane Co. for other
 16 manufacturers' products.**

17 After arguing the element of causation solely with reference to Washington law, Plaintiffs
 18 pivot to a discussion of the recent decision of the United States Supreme Court in the *DeVries*
 19 matter, a maritime law decision, when addressing the element of legal duty. In this sense, Plaintiffs
 20 try to "have it both ways." They presumably believe that their case is stronger on the element of
 21 causation if analyzed under Washington precedents, but stronger on the element of duty if analyzed
 22 under maritime precedents. To the contrary, Plaintiffs' claims fail on both elements regardless of
 23 the applicable law.

24 If Washington law applies to the question of legal duty, then summary judgment for Crane
 25 Co. is plainly appropriate. In *Braaten v. Saberhagen Holdings, Inc.*, 165 Wn.2d 373, 396-97, 198
 26 P.3d 493 (2008), the Court upheld the entry of summary judgment for Crane Co. upon finding that

1 there was no evidence that Crane Co. manufactured or supplied any of the asbestos-containing
 2 materials that plaintiff encountered. The record is the same here.

3 If maritime law applies to the question of legal duty, the result is the same. The Supreme
 4 Court in *DeVries* recognized, in a narrow exception to the general rule of no liability, that one
 5 manufacturer is legally responsible for another manufacturer's product only when the defendant
 6 manufacturer's product "required" the use of the allegedly injurious product. But, as a factual
 7 matter, and even assuming the *DeVries* analysis applies to Crane Co.'s valves,¹ the *Braaten* Court
 8 has already rejected any notion that Crane Co.'s valves required asbestos-containing materials to
 9 function. *See Braaten*, 165 Wn.2d at 394-95 (noting that Crane Co. catalogs offered non-asbestos-
 10 containing gaskets and packing for use with its valves, as well as the Navy's approval of more than
 11 60 different types of packing); *accord O'Neil v. Crane Co.*, 266 P.3d 987 (2012) (finding no
 12 evidence that the valves Crane Co. sold the Navy required asbestos-containing gaskets, packing,
 13 or insulation to operate).

14 The evidence is no different here. Plaintiffs argue in their opposition that the evidence
 15 shows that there were "few" substitutes for asbestos-containing gaskets and packing. *See* ECF
 16 Document 145, page 7. But "few" does not mean "none." If there were, as Plaintiffs concede,
 17 alternative, non-asbestos-containing gaskets and packing available for use with Crane Co.'s valves
 18 (which was an explicit finding of the *Braaten* Court), then Plaintiffs cannot establish required use,
 19 and their claim fails under maritime law just as it does under Washington law.

20 **3. Crane Co.'s Motion is ripe for decision.**

21 Although Plaintiffs ask the Court to delay consideration of Crane Co.'s motion until the
 22 close of all discovery, they do not satisfy the standard for such treatment. In order to satisfy Fed.
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24 ¹ Crane Co. was a defendant in the *DeVries* matter, and the trial court granted summary judgment
 25 to Crane Co. on the grounds that Crane Co. had no legal duty for materials which others added to
 26 Crane Co.'s valves but which Crane Co. did not manufacture or sell. *See* Order of November 18,
 2013, attached as Exhibit A to the Declaration of G. William Shaw, filed herewith. Plaintiff did
 not appeal that ruling.

1 R. Civ. P. 56(d), a party must identify the specific facts that further discovery would reveal and
2 explain why those facts would preclude summary judgment. *Tatum v. City & County of San*
3 *Francisco*, 441 F.3d 1090, 1100 (9th Cir. 2006). Broad references to a need for additional
4 discovery, or general statements that some discovery is not yet complete, are insufficient. See,
5 e.g., *Hall v. Hawaii*, 791 F.2d 759, 761 (9th Cir. 1986). Here, Plaintiffs have not identified any
6 reason to believe that any further discovery will alter the facts of record or fill the fundamental
7 gaps in Plaintiffs' proof.

III. CONCLUSION

9 For the foregoing reasons, Crane Co. respectfully requests that the Court grant Crane Co.
10 summary judgment and dismiss Plaintiffs' claims against Crane Co. with prejudice.

11 DATED this 24th day of January, 2020.

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**DEFENDANT CRANE CO.'S REPLY IN
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SUMMARY JUDGMENT - 6**
(Case No. 2:19-cv-00793-RSL)

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2020, I caused the foregoing to be served via email on all parties of record as follows:

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1 I declare under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct

3 SIGNED at Seattle, Washington this 24th day of January, 2020.

4 *s/ Mary J. Klemz*
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